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HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 10th February, 2023

No. 11 Rule Cell/V.Z.27.—Hon'ble the Chief Justice has been pleased to make the following amendments in the High Court Establishment (Appointment and Conditions of Service), Rules 1973 :—

I. The following criteria is inserted at the end of Rule 8 of the High Court Establishment (Appointment and Conditions of Service), Rules 1973 :—

"The following criteria shall be followed for promotion to the post of Special Secretary :—

1.	Service Record	24 marks*
2.	Higher Educational Qualification, i.e. Post Graduation/LL.B.	01 mark**
3.	Viva-voce for assessing Personality, General Awareness, and Knowledge of Rules and Practice.	15 marks
Total		40 marks

Service record of the officer of preceding five years shall be taken into consideration for assessing him/her for selection and awarding marks. Allocation of marks on the basis of service record shall be in the following manner :—

*Remarks earned in ACR	Value
Outstanding (A+)	24 Points
Very Good (A)	22 Points
Good (B+)	20 Points
Average/Satisfactory (B)	18 Points
Below Average (C)	00 Points

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The total points earned by a candidate on account of his last five ACRs will be divided by five and quotient will be the marks of the candidate.

**One Mark for LL.B./Post Graduation.

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Benchmark

30 Marks

Every candidate shall be required to appear in the interview for adjudging his overall suitability for the post. However, the existing seniority of the officers in the feeder cadre shall not be disturbed while making promotions."

II. The criteria prescribed in Rule 8-C of the High Court Establishment (Appointment and Conditions of Service), Rules 1973 is substituted in the following manner :—

"The following criteria shall be followed for promotion to the post of Assistant Registrar :—

1.	Service Record	24 marks*
2.	Higher Educational Qualification, i.e. Post Graduation/LL.B.	01 mark**
3.	Viva-voce for assessing Personality, General Awareness, and Knowledge of Rules and Practice.	15 marks
Total		40 marks

Service record of the officer of preceding five years shall be taken into consideration for assessing him/her for selection and awarding marks. Allocation of marks on the basis of service record shall be in the following manner :—

Remarks earned in ACR*Value**

Outstanding (A+)	24 Points
Very Good (A)	22 Points
Good (B+)	20 Points
Average/Satisfactory (B)	18 Points
Below Average (C)	00 Points

The total points earned by a candidate on account of his last five ACRs will be divided by five and quotient will be the marks of the candidate.

**One Mark for LL.B./Post Graduation.

Benchmark

30 Marks

Every candidate shall be required to appear in the interview for adjudging his overall suitability for the post. However, the existing seniority of the officers in the feeder cadre shall not be disturbed while making promotions."

III. In Rule 29 of the High Court Establishment (Appointment and Conditions of Service), Rules 1973 the another proviso is added in the following manner :—

"Further provided that the upper age limit for the candidates having minimum 02 years service on the establishment of this Court and/or on the establishment of District Courts of States of Punjab, Haryana and Union Territory, Chandigarh, shall be relaxed by the length of service on such establishment(s) subject to maximum of 05 years or upto 35 years of age, whichever is earlier."

BY ORDER OF HON'BLE THE CHIEF JUSTICE

(Sd.). . .,

(ARUN KUMAR AGGARWAL),
Registrar (Rules),
For Registrar General.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th February, 2023

No. 13/1/9936-HII(2)-2023/1632.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 79/2017, dated 12.12.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HAMIDULLAH KHAN, H. NO. 1716, KUMHARWALA MOHALLA, BURAIL, SECTOR 45, CHANDIGARH (Workman)

AND

ADECCO INDIA PVT. LTD. SHOP NO. 226, 2ND FLOOR, ELANTE MALL, INDUSTRIAL AREA, PHASE - I, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Hamidullah Khan, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that on 10.02.2014 the workman was appointed by the management as Karigar (Master Alternation). The workman remained in the uninterrupted employment up to 25.09.2016 when his services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹ 10,229/- wages per month at the time of termination. The workman is covered under the ESI scheme. The workman is a heart patient. On 26.09.2016 the workman went to ESI Dispensary, Sector 29, Chandigarh for medical check up. After taking medicine he went to attend his duties as usual. The workman was 5 minutes late. The workman showed ESI card to the management. The Manager of the management refused him work saying that his services are no more required. The management without assigning any reasons and notice verbally terminated the services of the workman. The workman lodged a complaint dated 29.09.2016 with the Labour Inspector, U.T. Chandigarh but the management refused to take the workman back on duty. The workman then served upon the management a demand notice dated 06.02.2017. The management neither replied nor took the workman back on duty. The Conciliation Officer was requested for his intervention. The management before the Conciliation Officer, U.T. Chandigarh, refused to take the workman back on duty. The refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and no retrenchment compensation was paid to the workman at the time of termination. The junior to the workman were retained in service at the time of termination. The management has violated Section 25-G of the ID Act, which makes the termination void. The action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. Prayer is made that the workman may be reinstated with continuity of service, full back wages as the workman remained un-employed during the said period and without any change in his service condition.

2. On notice, the management contested the claim statement by filing written reply dated 03.08.2018 wherein it is stated that admittedly the workman was appointed by the management on 10.02.2014. On 26.09.2016 the workman was absent from his duties without any information or intimation to the management. The management tried their level best by calling the workman on his mobile phone but no response was given from the side of the workman. At last the management sent show cause notice dated 03.10.2016 through registered post dated 05.10.2016 to the workman but no response was given by the workman. It is admitted as true that complaint was lodged before the Labour Inspector, U.T. Chandigarh but the summons in the said

complaint were received late by the management. The workman without intimation absented from his duties and had not handed over the charge of his seat despite asking number of times due to which the management suffered huge financial loss. The workman did not respond to the letter dated 03.10.2016 dispatched on 05.10.2016. The management filled the seat of the workman by appointing another person. The workman was not terminated from his services by the management rather the workman himself absented from his duties without giving intimation to the management. Therefore, no question arises of violation under Section 25-F of the ID Act. No due is left with the management against the workman. Rest of the workman contents of the claim statement are denied as wrong except para 2 which is denied for want of knowledge. Prayer is made that the claim may be dismissed with heavy costs.

3. The workman filed rejoinder dated 04.09.2018 to the written reply, wherein the contents of the written reply are denied except admitted facts of the claim statement and averments of claim statement are reiterated.

4. From the pleadings of the parties, following issues were framed *vide* order dated 04.09.2018 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In evidence, the workman Hamidullah Khan examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 21.03.2022 learned representative for the workman closed evidence on behalf of the workman. It is pertinent to mention here that during cross-examination of MW1 the workman has proved copy of demand notice dated 06.02.2017 *vide* Exhibit 'W1'.

6. On the other hand, management examined MW1 Raj Wadhwa - Assistant Manager (Legal & Compliance) who tendered his affidavit Exhibit 'MW1/A'. During cross-examination MW1 placed on record his authority letter dated 29.07.2022 whereby he was authorised to appear and depose in this case by the Director on behalf of the management *vide* Exhibit 'M1'. On 02.12.2022 learned representative for the management closed evidence on behalf of the management.

7. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

8. Onus to prove this issue was on the workman.

9. In order to prove his case the workman Hamidullah Khan examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the contents of claim statement in toto. To corroborate the version of AW1, learned representative for the workman referred document Exhibit 'W1'.

10. On the other hand, the management examined Shri Raj Wadhwa - Assistant Manager (Legal & Compliance) M/s Adecco India Private Limited, Chandigarh, who *vide* his affidavit Exhibit 'MW1/A' deposed the entire contents of the written reply. In cross-examination MW1 brought into evidence authority letter in his favour *vide* Exhibit 'M1'.

11. From the oral as well as documentary evidence led by the parties, it comes out that admittedly on 10.02.2014 the workman was appointed by the management as Karigar (Master Alteration). Admittedly, the management was covered under ESI Scheme. In this regard, MW1 Raj Wadhwa in his cross-examination admitted as correct that the workman joined with the management on 10.02.2014 and their firm is

covered under ESI. MW1 in his cross-examination further admitted as correct that M/s Adcco India Private Limited appointed the workman. It is admitted as correct that M/s Adcco India Private limited exists till date. The workman alleged that he was paid ₹ 10,229/- per month by way of monthly salary whereas the management has taken the plea that the workman was drawing salary ₹ 10,852/- per month. In this regard MW1 Raj Wadhwa in his cross-examination denied the suggestion as wrong that the workman was drawing monthly salary in the sum of ₹ 10,229/-. MW1 voluntarily stated that the workman was drawing salary in the sum of ₹ 10,852/- per month. None of the parties placed on record any document showing the amount of salary paid to the workman by the management. During course of arguments learned representative for the workman made submission that the amount of monthly salary as stated by the management may be considered.

12. As far as termination of the workman is concerned learned representative for the workman contended that on 26.09.2016 the workman went to ESI Dispensary, Sector 29, Chandigarh for medical check up. After taking medicine he went back to attend his duties as usual. The workman was 5 minutes late. The workman showed ESI card to the management. The Manager of the management refused him work saying that his services are no more required. The management without assigning any reasons and notice verbally terminated the services of the workman. On the other hand, learned representative for the management contended that MW1 in his examination-in-chief proved the fact that on 26.09.2016 the workman absented from his duties without giving any information or intimation to the management. The management tried its best by calling the workman on his mobile phone but there was no response from the worker's side. The management sent show cause notice dated 03.10.2016 through registered post dated 05.10.2016 to the workman but no response was given by the workman. Since the workman absented from his duties without intimation and has not handed over the charge of his seat despite repeated requests due to which the management suffered huge financial loss, thus the management filled the seat of the workman by appointing another person. The aforesaid version of MW1 that on 26.09.2016 the workman absented from duty without any intimation, stands proved from the cross-examination of the workman / AW1 wherein he has stated that no written intimation was given by him to said company that he has to go for check-up in hospital on 26.09.2016. AW1 admitted as correct that on 26.09.2016 he went for his treatment but the time has not been mentioned in the record brought by him today in the Court. From the aforesaid version of AW1 and MW1 it is made out that the services of the workman were dispensed with by the management on the ground that he absented from duty without intimation on 26.09.2016. But the plea taken by the management that the workman was issued show cause notice dated 03.10.2016 through registered post dated 05.10.2016 does not stand proved as neither the copy of show cause is proved into evidence nor any postal receipt dated 05.10.2016, to show the dispatch of registered post, is proved into evidence. In cross-examination of AW1 / workman no suggestion is put to him that he was issued show cause notice dated 03.10.2016 through registered post dated 05.10.2016. The management did not deny the fact that no charge sheet was issued / served to the workman for remaining absent from duty w.e.f. 26.09.2016 and that no domestic inquiry was conducted against the workman. In this regard MW1 in his cross-examination stated that the workman was not charge sheeted for remaining absent from duty w.e.f. 26.09.2016. No domestic inquiry was conducted against the workman. It is own admission of the management that they have filled the post of the workman by appointing another workman at his place. The management has taken the plea that now no job can be offered to the workman as the contract with principal employer / Aditya Birla has expired. The aforesaid plea is taken by the management for the first time during cross-examination of MW1. MW1 in his cross-examination stated that now the contract of management with Aditya Birla has expired, therefore, today no job can be offered to the workman. MW1 further stated that in his affidavit Exhibit 'MW1/A' no reference is made of Aditya Birla principal employer. To my opinion, the plea of the management

that their contract with principal employer Aditya Birla has expired is not admissible into evidence being beyond pleadings. From the evidence, it is duly proved on record that the workman was appointed by M/s Adecco India Private Limited which exists till date. This fact finds strength from the cross-examination of MW1 wherein he has admitted as correct that M/s Adecco India Private Limited appointed the workman. MW1 further admitted as correct that M/s Adecco India Private Limited exists till date. Undisputedly, the workman raised demand notice against the management and the conciliation proceedings were taken by before the Assistant Labour Commissioner, U.T. Chandigarh and in the conciliation proceedings the management did not take back the workman on job. In this regard, MW1 in his cross-examination stated that it is not to his knowledge if the workman had sent the demand notice dated 06.02.2017 under registered cover to the management. The fact which is not specifically denied is deemed to be admitted under the law. MW1 in his cross-examination further stated that in the conciliation proceedings the workman was not taken back on the job. From the discussion made above and facts & circumstances of the case, it is made out that the workman continuously worked with the management from 10.02.2014 to 25.09.2016 i.e. for more than 2½ years. The workman has completed 240 days of service during the preceding 12 months. Thus, the workman falls within the definition of Section 2(s) of the ID Act. Before terminating the workman from the job the management did not comply with Section 25-F and 25-H of the ID Act. Consequently, the termination of the workman is illegal and the workman is entitled to retrenchment compensation and notice pay, which comes to ₹ 13,565/- and ₹ 10,852/- respectively totalling ₹ 24,417/-.

13. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

14. In the view of foregoing finding on the issue above, this industrial dispute is partly allowed. The management is directed to pay the workman retrenchment compensation and notice pay, which comes to ₹ 13,565/- and ₹ 10,852/- respectively totalling ₹ 24,417/-. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the above said amount from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.)...

The 12th December, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 8th February, 2023

No. 13/1/9934-HII(2)-2023/1739.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 40/2018, dated 30.11.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PALANIVAL, AGED 29 YEARS, S/O SHRI SUBRAMANIYAM, R/O HOUSE NO. 3977, MOULI JAGRAN, U.T. CHANDIGARH (9815507783)(Workman)

AND

THE DIRECTOR, DEPARTMENT OF INFORMATION TECHNOLOGY, CHANDIGARH ADMINISTRATION, SECTOR 9, CHANDIGARH. (Management)

AWARD

1. Palanival, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman had joined the services on 01.09.2014 as Housekeeping with the respondent-management and posted at EDC Building situated at IT Park, Chandigarh. The workman has been carrying on his work as assigned by his superiors with the respondent-management from time to time. During his tenure, his work and conduct has already been found to be satisfactory. The workman has been performing various works which were assigned by his department or his superior irrespective of the work offered to him as the workman was doing work as Peon, Chowkidar, Attendant or Carrier since his appointment as employee with the respondent-management. The workman never given any chance of complaint and there were no adverse remarks against him. The workman being fully eligible had applied and accordingly he was appointed as Housekeeping with the respondent-management as his services were required. The department had also put his name on muster roll and salary is drawn in his saving bank account No.6177694334 maintained with Indian Bank, NAC, Manimajra, Chandigarh. The workman had come to know from the reliable resources that his services along with six other workmen are going to be terminated and the workman is to be entrusted to the contractor. The workman along with other six workmen moved representation dated 23.11.2015. The workman had completed 456 days on the date of his removal by the respondent-management from its office, which is more than 90 days. The workman is married and having responsibility of his family. The lives of the workman and his wards may be ruined, if his services are terminated, therefore, the workman may be reinstated in the interest of justice and future his wards. On 01.12.2015 the respondent-management told that the services of the workman along with six other workmen are no more required in the department and they have to join their services under contractor, if the workman / workmen want to work with the respondent-management. Therefore, all the workmen had given a representation dated 01.12.2015 to their department for not to remove them from their services, since they are working from the last so many years. The respondent-management had crossed all the limits and without assigning any reason and prior notice had terminated the services of above said workmen. The workman has not received monthly salary and he apprehends that the respondent-management might have got his signatures on such documents and makes him to come on the roads. The services of the workman are required by the respondent-management as evident from the fact that the respondent-management had deployed another person in his place through outsource / contractor. The respondent-management was not satisfied with the services of outsource employees. The workman and other six workmen had filed original application No.0060/01141-CH of 2015 titled Arvind & Others Versus Chandigarh Administration & Others before the learned Central Administrative Tribunal (CAT) which was drawn on 30.08.2017 with liberty to avail the

remedies available to the workman. The termination of the workman by the respondent-management is totally illegal, mala fide, arbitrary, null & void and in gross violation of the statutory provisions of the ID Act and against the principles of natural justice, equity and good conscious on the ground that the services of the workmen have been terminated on account of unfair labour practices, the act of terminating the services of the workmen are cryptic, the workmen were not supplied with the copies of relied upon documents which has caused material prejudice to them, no notice or retrenchment compensation was paid to the workman under Section 25-F of the ID Act, no preference is given to the workman at the time of termination, the workman were not afforded the opportunity of defence at any time, the other persons have been kept against the post of workmen and as such the verbal order of termination is violation of Section 25-H of the ID Act, no proper and valid inquiry was held against the workman and their services have been terminated against the principles of natural justice. Besides, the principle of 'first come last go' has been violated and has not been adopted by the respondent-management, though it is mandatory. Now the respondent-management again has victimized the workman and has terminated his services arbitrarily and illegally. Previously the workman had submitted demand notice dated 19.12.2017 to the respondent-management and before Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The conciliation Officer initiated conciliation proceedings in the matter of industrial dispute so raised by the workman but ultimately the conciliation proceedings fails on 13.03.2018 and the workman was advised to refer Section 2-A of the ID Act and accordingly this claim. Prayer is made that order of dismissal dated 01.12.2015 may be declared as illegal being in violation of labour law and principles of natural justice and the workman may be ordered to be reinstated in to service of the company with all service benefits including full back wages and continuity of service from the date of his illegal termination.

2. On notice, the respondent-management appeared through Law Officer and contested the claim by filing written statement dated 22.11.2018 filed on 07.02.2019 wherein preliminary submissions are made to the effect that the workman was hired as Housekeeping Staff by the employer/management directly on daily wages and was deployed at EDC Building (Entrepreneur Development Centre) at Rajiv Gandhi Chandigarh Technology Park, Chandigarh in the year 2012-13. As a policy matter it was decided by the Central Authority of Chandigarh Administration *vide* letter No.27/4/9-UTFII(12)-2014/9422 dated 07.11.2014 to appoint Category 'D' employees through an outsource agency for the betterment of this Category of employees in all the departments under the Chandigarh Administration and accordingly in the month of May 2013, after taking approval from the competent authority but the same could not be finalised due huge financial implications. Simultaneously, SPIC (Society for Promotion of IT in Chandigarh) a society working under the aegis of Department of IT i.e. management No.1 has also floated a tender for housekeeping and security staff for the Sampark Centres and IT Park needs. Accordingly, it was decided to obtain the services of the contractor selected by SPIC for contractual staff requirement of EDC Building. In the meantime, the services of these daily wages staff including the workman were approved to be extended / continued upto 30.11.2015. It was also decided that after selection of contractor by SPIC, the same contractor shall be utilised for supplying needs of the EDC Building and by bringing the workman including other daily wagers also under its role to benefit with ESI and EPF etc. After the due selection of contractor i.e. M/s Sherwal Enterprises by SPIC, the workman was asked to register with the said contractor for re-appointment and to avail benefits of deduction of ESI and EPF etc. from the salary. The workman refused to register with the contractor as is apparent from his letter dated 23.11.2015. Since the contractor was assigned the work of providing the staff and when the workman refused to register with the contractor, the contractor appointed its own staff in the EDC Building w.e.f. 01.12.2015. Accordingly, the services of the daily wages staff including the workman, who refused to get registered with the contractor appointed for the purpose as a policy matter left no option with the contractor but to arrange other resource to continue the services at EDC Building. It was the positive gesture on the part of the management department to advice the workman to register with the contractor for own benefits such as deduction of ESI, PF, gazetted holidays and Sunday off etc. However, the workman chosen not to register with the contractor. The first preference for appointment was given to the workman and co-workers who all were daily wage workers but they refused to register with the contractor.

3. Further on merits, it is admitted to the extent that the workman was hired by the employer / management for Housekeeping on daily wages and was further deployed at EDC Building at Rajiv Gandhi Chandigarh Technology Park, Chandigarh in the year 2012-13. There is no sanctioned post with the employer/ management therefore the workman was hired against non-sanctioned post on daily ways. It is denied that the workman has been assigned other works such as Peon, Chowkidar, Attendant or a Carrier since appointment. He was only performing the work of Housekeeping. The workman was paid remuneration on the basis of number of working days. Accordingly, remuneration per month was credited to saving account. The workman was not in continuous employment with the employer / management as he was not paid for non-working days / holidays notified by the Chandigarh Administration from time to time. The employer-management never terminated the services of the workman. It is the workman, who refused to register with the contractor so he is not entitled for reinstatement. The department had paid the salary of the workman including arrear in full which is evident from the statement downloaded from the Composite Financial Accounting System of the Chandigarh Administration. Further similar taken is taken as taken in the preliminary submissions. The services of the workman were never terminated by the management. In fact the workman was given an opportunity for reemployment through the approved contractor which is legal and in compliance of letter No.27/4/9-UTFII(12)-2014/9422, dated 07.11.2014 of the Chandigarh Administration to outsource services of category 'D' employees through a contractor. The workman failed to register with the approved contractor for re-employment and his services cannot be restored / reinstated at this stage being the fact that the approved contractor hired his own staff to provide housekeeping services for the employer / management. Hence, the workman is neither entitled to reinstatement nor to any back wages. Prayer is made that the present case may be dismissed with costs in the interest of justice.

4. The workman filed replication wherein contents of the written statement are denied as wrong except admitted facts of the claim statement and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 04.07.2019 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. In evidence the workman Palanival examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W9' and Mark 'WA' to Mark 'WC'.

Exhibit 'W1' is photocopy of saving bank account passbook of workman Palanivel, bearing account No.6177694334 maintained with Indian Bank, Manimajra, Chandigarh incorporating entries from 28.11.2013 to 21.01.2014 and 13.02.2019 to 25.04.2019.

Exhibit 'W2' is copy of letter dated 23.11.2015 issued to SIT, Deluxe Building, Sector 9, Chandigarh from the workmen namely Shanker, Arvind, Rajinder, Palanival, Manjula, Salavi (Department - Housekeeping) and Balwinder (Department - Mali) EDC Staff, IT Park, Chandigarh relating to the subject of 'Non-shifting of Housekeeping Staff of EDC under Private Contractor'

Exhibit 'W3' is copy of adhaar card of Rajeshwari W/o Palanivel.

Exhibit 'W4' is copy of adhaar card of Krishnavel S/o Palanivel.

Exhibit 'W5' is copy of adhaar card of Krishnaveni D/o Palanivel.

Exhibit 'W6' is copy of application dated 01.12.2015 jointly addressed from Arvind, Rajinder, Palanival, Manjula, Salavi, Balwinder and Shanker to the Advisor to the Administrator, U.T. Secretariat, Sector 9, Chandigarh and Director Department of Information Technology, Sector 9, Chandigarh on the subject of application for expelling the applicants from their services for the last more than 3 ½ years without giving prior notice from the EDC Building, IT Park, Chandigarh and to request to continue them to work at EDC Building, IT Park, Chandigarh.

Exhibit 'W7' is copy of order dated 30.08.2017 passed by the Central Administrative Tribunal, Chandigarh Bench on OA No.060/01141/2015 titled as Arvind & Others Versus Chandigarh Administration and Another.

Exhibit 'W8' is copy of demand notice dated 19.12.2017 under Section 2(k) of the ID Act raised by the workman to the Director, Department of Information Technology, Chandigarh Administration, Sector 9, Chandigarh.

Exhibit 'W9' is notice bearing Endorsement No.39 dated 03.01.2018 issued to the Director, Department of Information Technology, Chandigarh Administration, Sector 9, Chandigarh by the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh regarding demand notice under Section 2-A of the ID Act raised by Palanival, S/o Shri Subramaniam, R/o House No.3977, Mouli Jagran, U.T. Chandigarh.

Mark 'WA' is copy of attendance register of Peon, Housekeeping, Gardner for the month of April 2013.

Mark 'WB' is copy of attendance register of Housekeeping, Gardner for the month of November 2015.

Mark 'WC' (document also exhibited vide Exhibit 'AW2/2') is copy of letter Memo No.716 dated 21.03.2016 addressed from EDC Manager, Information Technology, Chandigarh Administration to CH-SPIC, PEC Campus, Sector 12, Chandigarh relating to the subject regarding work of Sherwal Enterprises is not satisfactory.

7. The workman examined AW2 Subhash Chander - Accountant, Department of Information Technology, U.T. Chandigarh, who brought the summoned record and proved documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

Exhibit 'AW2/1' is copy of attendance register from April 2013 to 30.11.2015 of Peon, Housekeeping including the name of the workman.

Exhibit 'AW2/2' is copy of letter Memo No.716 dated 21.03.2016 addressed from EDC Manager, Information Technology, Chandigarh Administration to CH-SPIC, PEC Campus, Sector 12, Chandigarh relating to the subject regarding work of Sherwal Enterprises is not satisfactory.

Exhibit 'AW2/3' copy of attendance register for the month of December 2015 of outsource employees / Housekeeping provided by M/s Sherwal Enterprises, deployed at EDC Building, Chandigarh.

On 23.09.2021 learned representative for the workman closed evidence in affirmative on behalf of the workman.

8. On the other hand, the management examined MW1 Dalbir Singh - Senior Assistant, Department of Information Technology, Chandigarh Administration, who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' to Exhibit 'M4' and Mark 'A'.

Exhibit 'M1' is copy of authority letter bearing Memo No.306/IT/2021-22/1501, dated 02.11.2021 issued by Director Information Technology, Chandigarh Administration in favour of Shri Dalbir Singh - Senior Assistant authorising him to appear before the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh in IDR/40/2018 titled Palanival Versus Director Department of Information Technology, Chandigarh Administration.

Exhibit 'M2' is copy of letter endorsement No.27/4/9-UTFII(12)-2014/9422, dated 07.11.2014 issued from the Finance Secretary, Chandigarh Administration to All Heads of Departments in Chandigarh Administration relating to the subject of filling up of Group 'D' posts through outsourcing - Reg.

Exhibit 'M3' is copy of statement of last salary paid to the workman (name of workman Palanivel incorporated at serial No.8) for the month of November 2015 downloaded from the Composite Financial Accounting System of the Chandigarh Administration.

Exhibit 'M4' is copy of statement of arrears in the sum of ₹ 8,169/- paid to the workman (incorporating name of workman Palanivel at serial No. 7) downloaded from the Composite Financial Accounting System of the Chandigarh Administration.

Mark 'A' is copy of application dated 23.11.2015 jointly addressed from Shanker, Arvind, Rajinder, Pallanival, Manjula, Salavi and Balwinder to the SIT, Deluxe Building, Chandigarh on the subject of request for non-shifting of housekeeping staff of EDC under private contractor.

On 30.11.2022 learned Law Officer closed the evidence on behalf of the management.

9. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1 :

10. Onus to prove this issue is on the workman.

11. Under this issue the workman Palanival examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' the averments of claim statement in toto. AW1 supported his oral version with documents Exhibit 'W1' to 'W9' and Mark 'WA' to 'WC'.

12. For corroboration the workman examined AW2 Subhash Chander - Accountant, Department of Information Technology, U.T. Chandigarh, who deposed that he is summoned witness working as Accountant in the Department of Information Technology since 2012. He had joined the department in the year 2001. He has brought the summoned record i.e. attendance register from April 2013 to 30.11.2015. Copy of same is Exhibit 'AW2/1' attendance register pertaining to 05.12.2012 to March 2013 is not available with the department. He has also brought the summoned record i.e. letter dated 21.03.2016 copy of which is Exhibit 'AW2/2'. He has brought the attendance register for the month of December 2015 i.e. Exhibit 'AW2/3'. Their department employed 9 employees through contractor M/ Sherwal Enterprises, SCO 68, First Floor, Sector 40-C, Chandigarh. The department is not paying salary to the employee mentioned in Exhibit 'AW2/3' and the department is making payment to the contractor. Prior to this the department used to pay salary directly into the account of workman in the present case.

13. On other hand, the management examined MW1 Dalbir Singh - Senior Assistant, Department of Information Technology, Chandigarh Administration, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement and supported his oral version with documents Exhibit 'M1' to Exhibit 'M4' and Mark 'A'.

14. From the oral as well as documentary evidence led by the parties, it comes out that there is no dispute between the parties with regard to the facts that in the year 2012-13 the workman was hired as Housekeeping Staff against non-sanctioned posts by the employer/management directly on daily wages and was deployed at Entrepreneur Development Centre (EDC) Building at Rajiv Gandhi Chandigarh Technology Park, Chandigarh and no appointment letter was ever issued to the workman. In this regard, the workman / AW1 in his cross-examination stated that he was appointed on dated 01.09.2014. No appointment letter was ever issued to him by the management. Admittedly, the attendance of the workman was marked in the muster roll. In this regard MW1 in his cross-examination admitted as correct that the attendance of the workman was marked in muster roll Exhibit 'AW2/1'. Undisputedly, the workman worked as Housekeeping with the management from 01.09.2014 to 30.11.2015. The workman has pleaded that on 01.12.2015 he was informed by the department that his services along with six other workmen are no more required in their department and they have to join its under the contractor if he wants to work with the department. The management in the written statement pleaded that the workman did not register with the approved contractor for re-employment and the contractor appointed his own staff in the EDC building w.e.f. 01.12.2015. The aforesaid pleas taken by the parties in their respective claim statement and written statement endorsed the fact that the workman worked up to 30.11.2015 with the management.

15. Learned representative for the workman referred cross-examination of MW1 Dalbir Singh wherein he has admitted as correct that the workman was employee of the department of Information Technology on daily wage basis for its EDC Building at IT Park. MW1 admitted as correct that there is no complaint against the workman in their record regarding he has not abided by the directions of his superiors. MW1 in his

cross-examination further stated that no written notice was given to the workman. MW1 denied the suggestion as wrong that the department has wrongly and illegally terminated the services of the workman without following the provisions of the ID Act. MW1 in his cross-examination stated that on 1st December, 2015 the department has engaged the services of Sherwal Enterprises for rendering the services in the EDC Building. At present there are 7 Housekeeping, 2 Malies, 7 Security Guards at EDC Building engaged through outsourcing agency. The said employees were working on the vacant posts as the earlier employee refused to join. By making reference to the aforesaid version of MW1 learned representative for the workman contended that the services of the workman are terminated in view of letter dated 07.11.2014 / Exhibit 'M2'. The management has wrongly interpreted the contents of Exhibit 'M2' according to which all the Group 'D' posts as and when fallen vacant are to be filled up through outsourcing after following proper procedure. In the present case when the letter dated 07.11.2014 / Exhibit 'M2' was issued, at that time the workman was already working against the post, therefore, the said post could not be considered as vacant. But the management / department after removing the workman from the post, deployed another employee on the same post throughout source contractor which show that there is still requirement of the post from which the workman has been removed. Moreover, during his tenure the workman served the management / department in a satisfactory manner and there was no complaint against his conduct.

16. On the other hand, learned Law Officer for the management has contended that the services of the workman were not terminated. In view of policy of the Government formulated *vide* letter dated 07.11.2014 / Exhibit 'M2', there was requirement to fill all the Group 'D' post as and when fallen vacant through outsourcing after following proper procedure and in pursuance of the said letter Exhibit 'M2', the workman was given option to join through outsource contractor to which the workman refused and thereafter w.e.f. 01.12.2015 the contractual employees were deployed against the vacant post through outsource contractor M/s Sherwal Enterprises.

17. To my opinion for better appreciation of policy of the Government, it would be apposite to reproduce the contents of letter endorsement No.27/4/9-UTFII(12)-2014/9422, dated 07.11.2014 issued from the Finance Secretary, Chandigarh Administration to All Heads of Departments in Chandigarh Administration relating to the subject of filling up of Group 'D' posts through outsourcing - Reg. / Exhibit 'M2':-

"I am directed to refer you on the subject noted above and to state that keeping in view the Punjab Government instructions issued vide No.15/74/2010-4PP3/391 dated 18.03.2021 and recommendations of 6th Central Pay Commission report, it has been decided by this Administration that all the Group 'D' posts, as when fallen vacant, are filled up through outsourcing after following proper procedure."

18. In the present case, the workman has failed to controvert the fact that he was working as daily wager Housekeeping against non-sanctioned vacant post with the respondent-management. By virtue of the instructions issued vide letter Exhibit 'M2' it was incumbent upon the department management to deploy an outsource employee against the said post instead of a daily wage workman. Before deploying an outsource employee against the said post, the department / management provided fair opportunity to the workman to apply through the contractor if he willing to continue to work on the said post but it is the workman who refused to accept the offer. In this regard the workman / AW1 in his cross-examination admitted as correct that the management offered him to join through contractor before he left from the management. The workman own witness AW2 Subhash Chander in his cross-examination admitted as correct that they had offered to the workman to join through outsource agency but the workman refused to work under the contractor. MW1 in his cross-examination stated that at present there are 7 Housekeeping, 2 Malies, 7 Security Guards at EDC Building engaged through outsourcing agency. The said employees were working on the vacant posts as the earlier employee refused to join.

19. The plea taken by the workman in his cross-examination that he do not know whether Chandigarh Administration had framed policy to outsource for Group 'D' posts is devoid of merits because the fact being not specifically denied is deemed to be admitted under the law. Moreover, the letter dated 23.11.2015 /Exhibit 'W2' is addressed from the workmen including the name of the workman Palanival at serial No.4 to SIT Deluxe Building, Chandigarh and as per the contents of said letters the workman requested that according to new Government policy from Head of Department of EDC Building, they are being shifted under private contractor but they do not want to work under the private contractor and further requested not to shift them and keep them treating employees of EDC Building as previously and they mentioned the three reasons for which they are not willing to work under the private contractor. The said three reasons are reproduced as below :—

- "1) If we are working under private contractor then they can terminate us any time.*
- 2) DC rates are also decrease by them.*
- 3) We are not receiving the salary on time."*

From the above mentioned contents of Exhibit 'W2' it is duly proved on record that the workman is very much in knowledge of the new Government policy / instructions issued through letter dated 07.11.2014 and this fact falsifies the version of AW1 that he has no knowledge whether Chandigarh Administration had framed policy to outsource for Group 'D' posts. The contents of letter Exhibit 'W2' further supports the plea of the management that the workman was offered to work through the contractor to which the workman refused.

20. In view of the reasons recorded above, the termination of the workman is not illegal in any manner rather the workman himself left the job by refusing to accept the offer to join through outsource agency / contractor as per instructions of the Government dated 07.11.2014 / Exhibit 'M2'.

21. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

22. In the view of foregoing finding on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 30th November, 2022.

(Sd.)...,

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Vishal Kumar BK, S/o Sukhnarain, House No. 2399, Sector 23-C, Chandigarh, have changed my name from Vishal Kumar BK to Vishal Kumar.

[111-1]

I, Manjit Gill, W/o IC-22786X Retd. Col Gurlal Singh Gill, # 189, Sector 33-A, Chandigarh, have changed my name to Manjit Kaur Gill. My D.O.B. 04-07-1951.

[112-1]

I, Meghraj, S/o Lachhiram Bista, R/o 1409/1, Morigate Manimajra, Sector-13, Chandigarh, have changed my name to Meghraj Bista.

[113-1]

I, Ankita Marya @Anju Rani, W/o Late Sh. Atul Marya, R/o House No. 475, Sector 22-A, Chandigarh, declare that I have changed my name Ankita Marya *alias* Anju Rani to Ankita Marya.

[114-1]

I, Nawab Ali, S/o Basir Ahmed, R/o # 515, Burail, Sector 45, Chandigarh, have changed my name to Navab Ali.

[115-1]

I, Lachiram Vist, S/o Amrit Bista, R/o 1409/1, Morigate Manimajra, Sector 13, Chandigarh, have changed my name to Lachhiram Bista.

[116-1]

I, Bhuma Kumari, W/o Lachhiram Bista, R/o 1409/1, Morigate Manimajra, Sector 13, Chandigarh, have changed my name to Bhuma Kumari Bista.

[117-1]

I, Amandeep Kaur Cheema, W/o Harpreet Singh, R/o H. No. 2183/B, Block No. 14, Sector 63, Chandigarh, have changed my name from Amandeep Kaur Cheema to Amandeep Kaur.

[118-1]

I, Paramjit, S/o Sh. Baljinder, R/o 2838, Ambedkar Colony, Palsora, Sector 56, Chandigarh, have changed my name from Paramjit to Paramjit Singh.

[119-1]

I, Simpy Garg, W/o Mohit Singla, # 3514, Sector 46-C, Chandigarh, have changed my name to Simpy.

[120-1]

I, Tarushi Garg, D/o Mohit Singla, # 3514, Sector 46-C, Chandigarh, have changed my name to Tarushi.

[121-1]

I, Chirag Mehta, S/o Yogesh Kumar Mehta aged 25 years, now R/o Ho. No. 1015, Sector 11-C, Chandigarh, have changed my name to Chirag Yogendra Mehta (Chirag Y. Mehta) for all purposes.

[122-1]

I, Manjesh Kumar Sharma, S/o Jai Narain Sharma, R/o # 450, Pipliwala Town, Manimajra, Chandigarh, have changed my name from Manjesh Kumar Sharma to Manjessh Jai Sharma.

[123-1]

I, Madan Lal Brar, S/o Sh. Sawan Ram, R/o # 2053/1, HIG Flat, Sector 47-C, Chandigarh,-160047, have changed my name from Madan Lal to Madan Lal Brar.

[124-1]

I, Nathu Ram, S/o Sawan Ram, R/o # 315, Phase-1, B.D.C. Sector 26, Chandigarh. I have changed my name from Nathu Ram to Ram Nath Chandaliya.

[125-1]

I, Manish Kumar, S/o Ashok Kumar Gupta, # 1925, Phase 2, Ram Darbar, Chandigarh, declare that I have changed my name from Manish Kumar to Manish Gupta.

[126-1]

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